

Decision 04-12-039 December 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan for Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

Investigation 02-04-026
(Filed April 22, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 04-02-062**

This decision awards Aglet Consumer Alliance (Aglet) \$3,133.01 for its contribution to Decision (D.) 04-02-062, adopting a Rate Design Settlement in the bankruptcy investigation of Pacific Gas and Electric Company (PG&E).

I. Background

The Commission, in D.04-02-062, adopted a Rate Design Settlement which implemented an overall rate reduction of about \$799 million. Aglet requests compensation for its participation in this.

II. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a

substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804 (c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contentions or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural requirements of Items 1-4 above are combined, followed by separate discussions on Items 5-6.

On August 20, 2004 Administrative Law Judge (ALJ) Robert Barnett ruled that Aglet has met the eligibility requirements necessary to make its

request for compensation including the filing of an NOI as required § 1804(a), is a customer as defined in § 1802(b), and has made an adequate showing of financial hardship as required by §§ 1802(g) and 1804(b)(1). Compensation for the professional hours at issue in the instant filing was timely requested by Aglet in its prior compensation request addressed in D.04-08-025.¹ (§ 1804(c).)

III. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party that assisted the Commission in making its decision? (*See* §§ 1802(h) and 1802.5.) As described in § 1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to

¹ In D.04-08-025, the Commission awarded Aglet \$126,971.31 for its substantial contribution to PG&E's bankruptcy settlement decision (D.03-12-035). However, the Commission excluded 12 professional hours (and related expenses) since those hours pertained to the Rate Design Settlement, which was separately addressed in D.04-02-062. Those excluded professional hours and related expenses are the subject of this compensation request.

whether the customer's presentation substantially assisted the Commission.²

The question before us now is whether the contribution of Aglet warrants an intervenor compensation award in the amount requested. We begin, as the statute requires, by determining whether Aglet, individually, made a substantial contribution to D.04-02-062.

Aglet says that since it represents residential and small commercial customers, it focused on the Rate Design Settlement's effect on those customers. Prior to the settlement, Aglet's Director James Weil participated fully in the negotiations that led to the settlement. Aglet participated in conference calls, discussed ratepayer issues with TURN, and edited settlement documents. Aglet believes that taken as a whole, its work made a substantial contribution to D.04-02-062, and it contributed to the proceeding in a manner that was productive and resulted in benefits to ratepayers in comparison to the costs of participation.

Aglet states that because the rate design issues were settled and the negotiations that led to the Rate Design Settlement are confidential it cannot point to specific ratepayer benefits attributable to Aglet or any other party. However, Aglet notes that the adopted settlement protects small customers through a floor or minimum percentage reduction to the residential class. (D.04-02-062, p. 4.)

We conclude that given the overall benefits of the settlement and the importance of representation of all affected interests in any settlement to be reviewed and possibly approved by the Commission, Aglet's participation made

² D.98-04-059, 79 CPUC2d, 628 at 653.

a substantial contribution to the Commission's rate design decision as defined in § 1802(h).

IV. Reasonableness of Requested Compensation

After we have determined that a customer made a substantial contribution and have established its scope, we then look at whether the compensation requested is reasonable. The components of the request must constitute reasonable fees and costs of the customer's participation that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Also, to assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

Aglet's requests compensation as follows:

| | |
|--|------------|
| 11.1 hours of Weil's professional time, at \$250/hr. | \$2,775.00 |
| 2.6 hours of Weil's compensation time, at \$125/hr. | \$325.00 |
| Copying | 11.50 |
| Postage | 5.51 |
| FAX charges | 16.00 |
| Total request | \$3,133.01 |

A daily listing of the specific tasks performed by James Weil in connection with the rate design phase of this proceeding is set forth in Attachment A to Aglet's compensation filing. Aglet states that the request includes all of Weils' professional time spent on the Rate Design Settlement, time spent preparing this compensation request, FAX charges removed from Aglet's compensation award approved in D.04-08-025, and estimated expenses associated with the compensation request. It excludes time spent reviewing PG&E's bankruptcy – related advice filings and expenses associated with Aglet's February 10, 2004 compensation request.

Aglet says its usual practice is to allocate Weil's professional time by major issue. However, Aglet believes such allocation is unnecessary in this instance because the number of hours is small and D.04-02-062 addressed a single issue. Aglet believes its work was performed efficiently. According to Aglet, its Director James Weil is experienced in Commission proceedings, is familiar with the Commission's Rules of Practice and Procedure, is an expert in utility ratemaking and is well qualified to advocate ratepayer interests.

Further, Aglet states that it contributed to the proceeding in a manner that did not duplicate contributions made by other intervenors. Aglet cooperated with TURN and Office of Ratepayer Advocates in the activities that led to the Rate Design Settlement. Also, Aglet notes that it represents customer interests that would otherwise be underrepresented in this proceeding.

We find that given the scope and timeframe of the rate design phase of this proceeding, the number of hours and related expenses claimed by Aglet are reasonable.

Aglet requests Commission approval of (1) an hourly rate of \$250 for professional work performed by Weil during 2004 and (2) one half of that rate for

preparation of this compensation request consistent with Commission practice. (D.89-09-046, p. 1.)

The Commission has previously awarded Aglet compensation for Weil's time at a professional rate of \$220 per hour, and a travel and compensation preparation rate of \$110 per hour for work in 2000 through 2003. (See D.00-07-015.) The latest decision that awarded Aglet compensation at those rates was D.04-08-025, approved August 19, 2004 in this proceeding. Aglet has also requested approval of an hourly rate of \$250 in a compensation request filed July 27, 2004 in A.02-11-017 *et al.*, PG&E's test year 2003 general rate case, but that request is still pending.

Weil is not an attorney, but he holds an undergraduate degree from Massachusetts Institute of Technology and a Ph.D. in Engineering from the University of California, Berkeley. He has more than 20 years of utility-related experience.

We conclude that the requested increase in hourly rates from \$220 to \$250 (13.6%) for Weil's professional work in 2004 is reasonable. It has been four years since the Commission approved Weil's \$220 rate. Since then Weil has gained experience in representing the interests of small customers. He conducts his own cross examination of witnesses, and the requested \$250 rate is substantially lower than rates paid to many attorneys that practice before the Commission. (See D.04-08-025, attached Compensation Decision Summary Information.) Weil demonstrated that experts in the same proceeding performing similar work to Weil were paid rates significantly more than Weil requests. We note that the increase we adopt is more than the 8% increase over 2003 rates we found would be reasonable in ALJ-184, but we approve this higher

increase (13.6%) because Weil had not sought any increases in his authorized rate since 2000.

V. Award

We award Aglet \$3,133.01. The award is to be paid by PG&E, the regulated entity in this proceeding, as required by § 1807. Consistent with previous Commission decisions, we will order that interest be paid on the respective award amounts (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after the designated intervenor filed its compensation request and continuing until full payment of the award is made.

We remind Aglet that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

VI. Comment Period

This is an intervenor compensation matter. As provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

VII. Assignment of Proceeding

Commissioner Michael R. Peevey is the Assigned Commissioner. The rate design portion of this proceeding was assigned to ALJ Janet A. Econome.

VIII. Findings of Fact

1. Aglet made a substantial contribution to D.04-02-062 as described herein.

2. Aglet's requested hourly rate of \$250 per hour for professional work in 2004 by Weil is reasonable when compared to the market rates for persons with similar training and experience.

3. Aglet's total request of \$3,133.01 is reasonable.

Conclusion of Law

Aglet has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for claimed fees and expenses for its substantial contribution to D.04-02-062.

O R D E R

IT IS ORDERED that:

1. As compensation for its substantial contribution to Decision 04-02-062, we award Aglet Consumer Alliance (Aglet) \$3,133.01.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E) shall pay Aglet its award.
3. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made. Interest shall be paid beginning on November 16, 2004 for Aglet's award.
4. This proceeding is closed.

This order is effective today.

Dated December 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY

Commissioners

APPENDIX A
Compensation Decision Summary Information

| | |
|----------------------------------|----------------------------------|
| Compensation Decision(s): | D0412039 |
| Contribution Decision(s): | D0402062 |
| Proceeding(s): | I0204026 |
| Author: | ALJ Econome |
| Payer(s): | Pacific Gas and Electric Company |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier ? | Reason Change/ Disallowance |
|-------------------------|-------------------|-------------------------|-----------------------|---------------------|------------------------------------|
| Aglet Consumer Alliance | 9/1/2004 | \$3,133.01 | \$3,133.01 | No | |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|---------------|-------------------------|-----------------------------|----------------------------------|---------------------------|
| James | Weil | Policy Expert | Aglet Consumer Alliance | \$220 | 2000 | \$220 |
| James | Weil | Policy Expert | Aglet Consumer Alliance | \$220 | 2001 | \$220 |
| James | Weil | Policy Expert | Aglet Consumer Alliance | \$220 | 2002 | \$220 |
| James | Weil | Policy Expert | Aglet Consumer Alliance | \$220 | 2003 | \$220 |
| James | Weil | Policy Expert | Aglet Consumer Alliance | \$250 | 2004 | \$250 |